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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MEDIA RIGHTS TECHNOLOGIES, INC.,

Plaintiff,

v.

MICROSOFT CORPORATION AND DOES 1-1000, INCLUSIVE,

Defendants.

CASE NO. 5:17-cv-01925

MEDIA RIGHTS TECHNOLOGIES, INC.'S COMPLAINT FOR COPYRIGHT INFRINGEMENT, VIOLATION OF THE DIGITAL MILLENNIUM COPYRIGHT ACT AND BREACH OF CONTRACT

DEMAND FOR JURY TRIAL

Plaintiff Media Rights Technologies, Inc. ("MRT") by and through its attorneys, alleges as follows:

INTRODUCTION

1. This case arises out of the distribution by defendant Microsoft Corporation ("Microsoft") of more than five billion (5,000,000,000) copies of products which infringe MRT's copyrights. These infringing products were created by Microsoft in willful violation of MRT's copyright rights and the Digital Millennium Copyright Act for commercial gain and in breach of Microsoft's contract(s) with MRT. This case also arises out of the distribution of an unknown number of copies of products by Does 1-1000, inclusive (the "Doe Defendants") which infringe MRT's copyrights because they include or are derived from the Microsoft infringing products.

PARTIES

2. MRT is a California corporation with its principal place of business at 55 River Street, Suite 200, Santa Cruz, California 95060.

3. Microsoft is a Washington corporation with its principal place of business at One Microsoft Way, Redmond, Washington 98052. MRT is informed and believes, and on that basis alleges, that Microsoft has numerous corporate offices in this District including in San Francisco and Mountain View.

4. MRT is informed and believes, and on that basis alleges, that the Doe Defendants obtained software which infringes MRT's copyrights directly or indirectly from Microsoft and included the infringing software and/or derivative works thereof in at least their e-commerce, entertainment, finance, defense, education and healthcare applications distributed to the public as herein alleged.

5. MRT will seek leave of Court to add the names of the Doe Defendants to this Complaint when their identities are ascertained through discovery.

JURISDICTION

6. This action arises under the United States Copyright Act, 17 U.S.C. § 101, et seq.

7. This Court has subject matter jurisdiction over Counts I and II under 28 U.S.C. §§ 1331 and 1338.

8. This Court has subject matter jurisdiction over Count III under 28 U.S.C. §1367(a).

9. This Court has personal jurisdiction over Microsoft because Microsoft has substantial, continuous and systematic contacts with this District, including by regularly transacting business within the District. In addition, Microsoft has purposefully directed its activities toward, and consummated transactions within, this forum and has purposefully availed itself of the privilege of conducting activities in this forum, thereby invoking the benefits and protections of its laws.

10. The acts complained of herein arise out of and relate to Microsoft's forum-related activities, making this Court's exercise of jurisdiction over Microsoft reasonable.

11. MRT is informed and believes, and on that basis alleges, that this Court has personal jurisdiction over the Doe Defendants because they have substantial, continuous and systematic contacts with this District, including by regularly transacting business within the District and have purposefully directed their activities toward, and consummated transactions within, this forum and have purposefully availed themselves of the privilege of conducting activities in this forum, thereby invoking the benefits and protections of its laws.

12. MRT is informed and believes, and on that basis alleges, that the acts complained of herein arise out of and relate to the Doe Defendants' forum-related activities, making this Court's exercise of jurisdiction over the Doe Defendants reasonable.

VENUE

13. Venue is proper in this jurisdiction under 28 U.S.C. §§ 139l(b) and 1400(a) because a substantial part of the wrongful conduct alleged herein occurred in this District, and MRT has suffered substantial harm in this District. Additionally, Microsoft may be found in this District.

INTRA-DISTRICT ASSIGNMENT

14. This is an intellectual property action and is assigned on a district-wide basis under Civil L.R. 3-2(c).

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BACKGROUND

Hank Risan

15. At the age of 16, Mr. Hank Risan, the founder of the company that is now MRT, enrolled at the University of California, Los Angeles and subsequently earned bachelor's degrees in both mathematics (with Honors) and neurobiology from the University of California, Santa Cruz.

16. Mr. Risan concurrently attended Ph.D. programs at the University of California, Santa Cruz in neurobiology, and the University of California, Berkeley in mathematics. Mr. Risan also did work on his graduate thesis in mathematics at the University of Cambridge, England.

17. In or about 1999, Mr. Risan founded the Museum of Musical Instruments ("MoMI," accessible at www.themomi.org). MoMI is an educational website that gives people a unique opportunity to examine, explore and experience the finest examples of Nineteenth and Twentieth Century musical instruments. Among other things, MoMI made available to the public on its website online exhibitions such as "Bound for Glory" which was created jointly by MoMI and the Smithsonian Institution, "Dangerous Curves" which was jointly created by MoMI and the Museum of Fine Arts, Boston, and "The Guitar is Art" which was jointly created by MoMI and the Museum of Modern Art (New York).

18. Beginning in or around 2000, MoMI was one of the first websites to broadcast music pursuant to 17 U.S.C. §§ 112 and 114 and MoMi's website had received more than four billion hits by the end of 2002. MoMI also obtained experimental interactive online publishing licenses from ASCAP, BMI and SESAC.

19. To prevent unauthorized copying of copyrighted works, MoMI developed measures that prevented copying of the copyrighted music it broadcast/downloaded by, among other things, hiding the music in hidden directories on end users' computers.

Content Piracy and CDP

20. MRT is informed and believes, and on that basis alleges, that in or around 2000, Microsoft made a change to its operating system which enabled users to access the hidden

directories. MRT is informed and believes, and on that basis alleges, that once it became possible to locate the content, it could then be copied and played without restriction.

21. MRT is informed and believes, and on that basis alleges, that around the same time that Microsoft made changes to its operating system that enabled users to find hidden directories, so-called "streamripping" applications such as Total Recorder became available to the public. Streamripping applications allow the interception of content between a computer's digital to analog converter and the computer's sound card (hereinafter referred to as "Content Piracy"), allowing copying and unrestricted distribution of the content.

22. In response to the new vulnerability of music files to Content Piracy, it was suggested to Mr. Risan in or around 2002 that he approach the Recording Institute of America ("RIAA") to find out what security measures for recorded content the RIAA and its members required.

23. Mr. Risan was introduced to Mr. Cary Sherman, the President of the RIAA, who requested that Mr. Risan solve the streamripping problem, which solution would benefit the members of the RIAA.

24. In response to Mr. Sherman's request, Mr. Risan implemented his previously conceived Controlled Data Pathway ("CDP"), which MRT is informed and believes, and on that basis alleges, is the first Digital Rights Management ("DRM") system effectively to prevent Content Piracy and streamripping in particular.

25. In 2002, Mr. Risan filed the first of a series of patent applications on his CDP inventions, the first patent from which issued on January 1, 2008 (the "Risan CDP Patents").

MRT

26. In or around 2001, Mr. Risan and his business partner at MoMI, Bianca Soros, founded Music Public Broadcasting System ("MPBS") to develop security technologies and intellectual property that would enable the effective transmission, protection and monetization of digital content for e-commerce, entertainment, finance, defense, education and healthcare companies in the commercial and consumer sectors.

27. In or around 2004, MPBS changed its name to Media Rights Technologies, Inc.

MPBS and MRT will be referred to collectively as "MRT."

28. Mr. Risan assigned in writing all his rights in CDP to MRT.

29. In or around July 2002, MRT hired a third-party software developer ("Developer") to write a software application that implemented CDP and prevented Content Piracy and streamripping in particular. The software implementation of CDP created by Developer has gone by various names through its existence, but will be referred to herein as X1 Recording Control (hereinafter "X1RC").

30. Developer assigned in writing all rights, including all copyrights, in X1RC to MRT in an agreement effective July 1, 2002 (the "Developer Agreement").

31. In addition to preventing Content Piracy and streamripping in particular, X1RC allows copyright owners such as artists, filmmakers and songwriters to monetize their copyright interests in works of authorships, and also safeguards the interests of their partners, publishers and broadcasters.

32. Because the specifications of some of the Risan CDP Patents disclose critical excerpts of the X1RC source code, MRT inserted a watermark into the X1RC software to enable detection of unlawful copying (the "Watermark").

33. The Watermark uses an undocumented form of the Microsoft Windows FindWindow function to support an idiosyncratic and archaic 16 bit Windows calling method (the final 16-bit version of Windows was Windows 3.11 last shipped in 1995). The Watermark was specifically designed to be, and is in fact, detectable in object code compiled from source code containing it.

BlueBeat and the BlueBeat SeCure Player

34. In or around 2002, MRT began developing a new secure web-based music service to be known as "bluebeat.com." Bluebeat.com operated an Internet broadcast music service licensed under §§ 112 and 114 of the Copyright Act to stream music.

35. In or around November 14, 2003, MRT incorporated BlueBeat, Inc. as a wholly-owned subsidiary.

36. To prevent copying or recording, music downloaded from bluebeat.com could

only be played on a copy of the Microsoft Windows Media Player ("WMP") which had been "skinned" with the X1RC software and other MRT software called the BlueBeat SeCure Player (the "BBSP"). The BBSP is an application designed to interface only with Microsoft operating systems to deliver secure multi-media content from bluebeat.com. The BBSP prevented Content Piracy of content downloaded from bluebeat.com and played on computers using Microsoft operating systems.

37. The BBSP incorporates the X1RC software and has encryption and anti-circumvention technological measures intended to prevent reverse-engineering.

38. The BBSP also contains the Watermark from the X1RC software it incorporates.

39. Developer assigned in writing all rights, including all copyrights, in the BBSP to MRT in the Developer Agreement.

The RIAA and IFPI

40. MRT is informed and believes, and on that basis alleges, that the recording and video industries view the threat to their secured content with alarm, and were interested in finding ways of preventing Content Piracy in the early 2000-time period.

41. MRT is informed and believes, and on that basis alleges, that in or about 2000, Microsoft developed a DRM system called "Palladium."

42. MRT is informed and believes, and on that basis alleges, that in 2002, the RIAA and its European equivalent, the International Federation of the Phonographic Industry ("IFPI"), tested Palladium and found it did not prevent Content Piracy.

43. MRT is informed and believes, and on that basis alleges, that in part based on the RIAA's determination that Palladium did not prevent Content Piracy, in 2004 Microsoft began to de-emphasize Palladium, stating instead that some of its features would be incorporated into a future operating system.

44. On or about February 19, 2003, the RIAA, the IFPI and MRT entered into a Software Evaluation License Agreement so that the RIAA and the IFPI could evaluate the effectiveness of MRT's X1RC software.

45. On or about May 2, 2003, the RIAA and the IFPI together issued a series of

confidential reports which concluded that MRT's X1RC software was one hundred percent effective at preventing Content Piracy (the "RIAA Report on X1RC").

46. The RIAA Report on X1RC was initially circulated to the major recording labels (e.g., EMI, BMG, Sony).

47. MRT is informed and believes, and on that basis alleges, that in June 2003 the RIAA and IPFI distributed the RIAA Report on X1RC to Microsoft and various other computer companies.

48. MRT is informed and believes, and on that basis alleges, that the RIAA Report on X1RC subsequently was distributed to the thousands of members of the RIAA and the IFPI.

49. MRT is informed and believes, and on that basis alleges, that in 2003, Steven Marks, the RIAA general counsel, told Microsoft that it needed to deploy effective DRM in its operating systems that would effectively prevent Content Piracy to avoid potential copyright infringement liability to RIAA members.

50. MRT is informed and believes, and on that basis alleges, that Mr. Marks recommended that Microsoft deploy MRT's X1RC software in Microsoft's operating systems because, unlike Microsoft's Palladium DRM system, X1RC effectively prevents Content Piracy.

51. In addition, the Motion Picture Association of America ("MPAA") tested another software application containing the X1RC software developed by MRT and also found it to be effective at preventing piracy of video content from a computer.

52. MRT is informed and believes, and on that basis alleges, that the MPAA also recommended to Microsoft that it deploy MRT's X1RC software in Microsoft's operating systems.

53. On or about August 28, 2003, David Vaskevitch, the Chief Technology Officer of Microsoft, contacted MRT by email regarding the X1RC software.

Microsoft Investigates MRT's CDP Technology

54. MRT is informed and believes, and on that basis alleges, that Microsoft learned that MRT was looking for investors and became interested in acquiring a majority interest in MRT in order to get control over the X1RC software so it would have an effective DRM system

that would protect against Content Piracy and streamripping in particular.

55. In August 2004, at the request of Mr. Vaskevitch, MRT provided information about CDP to Microsoft, including the published Risan CDP Patents.

56. On or about August 17, 2004, MRT and Microsoft entered into a "Microsoft Corporation Non-Disclosure Agreement (Standard Reciprocal)" (the "2004 Microsoft-MRT NDA"). Among other things, section 2(a)(iv) of the 2004 Microsoft-MRT NDA prohibited reverse engineering, decompiling or disassembling of MRT products disclosed under the NDA.

57. Pursuant to the 2004 Microsoft-MRT NDA, MRT provided Microsoft with an executable copy of the BBSP in the fall of 2004 and provided Microsoft with online access to the BBSP.

58. On or about October 21, 2004, Microsoft requested a prospectus and business plan from MRT.

59. On or about December 1, 2004, MRT sent Microsoft a copy of the Media Rights Technologies Prospectus dated December 1, 2004 and the MRT business plan. At that time, substantially all the value in MRT was in the X1RC software, the BBSP which included the X1RC software, and the Risan CDP Patents.

Microsoft Offers to Buy a Majority Interest in MRT at a $100 Million Valuation

60. In mid-December 2004, Microsoft offered to invest $50 million for a 51% interest in MRT, effectively valuing MRT at $100 million.

61. MRT is informed and believes, and on that basis alleges, that in 2004, over $50 million was a threshold amount for the size of transactions requiring pre-disclosure to the antitrust authorities under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR").

62. MRT is informed and believes, and on that basis alleges, that the reason that Microsoft offered $50 million for a 51% interest in MRT is that Microsoft wanted to avoid being required to report the proposed transaction to the antitrust authorities under HSR both because the acquisition would have given Microsoft a monopoly in effective DRM security, and because of its prior dealings with those antitrust authorities, including in *United States of America v. Microsoft Corporation*, Civil Action No. 98-1232 (D.D.C.) ("*US v. Microsoft*") which resulted in a final

judgment dated November 12, 2002.

63. MRT is informed and believes, and on that basis alleges, that Microsoft valued MRT at far more than the $100 million valuation reflected in its $50 million offer for 51% of MRT.

64. MRT declined Microsoft's offer as too low based on the valuation of MRT provided by MRT's investment bankers, WR Hambrecht & Co, and the investment bankers' recommendation.

The Grokster Decision and the PERFORM ACT of 2007

65. MRT is informed and believes, and on that basis alleges, that following the Supreme Court's June 2005 decision in *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005), Mr. Marks asked MRT and Mr. Risan to go to Washington DC to provide information regarding and a demonstration of the X1RC software to attorneys for the House of Representatives and Senate Judiciary Committees who were drafting the proposed Platform Equality and Remedies for Rights Holders in Music Act of 2007 (the "PERFORM Act of 2007").

66. MRT and Mr. Risan demonstrated X1RC to attorneys for the House of Representatives and Senate Judiciary Committees who were drafting the proposed PERFORM Act of 2007.

67. MRT is informed and believes, and on that basis alleges, that the PERFORM Act of 2007 contained a provision which would have required the implementation of DRM protections and restrictions on digital audio transmissions, including those over the Internet (Internet radio) and on satellite radio.

68. MRT is informed and believes, and on that basis alleges, that Microsoft believed that under the *Grokster* decision it had potential liability to members of the RIAA and other content providers if it did not implement in its operating system and other products an effective DRM system, like X1RC, to prevent Content Piracy and streamripping in particular, and if the PERFORM Act of 2007 were enacted, Microsoft would have been required to do so.

BBSP for WMP

69. On or about March 22, 2006, Mr. Marks contacted MRT by email about the X1RC

software.

70. In or about the late spring or early summer of 2006, the RIAA and IFPI requested that MRT develop a version of the BBSP that could prevent Content Piracy of unencrypted Windows Media Player files ("WMP files") delivered by Microsoft servers to client computers, such that the recording of the streams was impossible (the BlueBeat SeCure Player for WMP or "BBSP for WMP Software").

71. MRT is informed and believes, and on that basis alleges, that the reason the RIAA and the IFPI wanted the BBSP for WMP Software was because unencrypted WMP files were typically stored on servers running Microsoft operating systems used by members of the Digital Media Association ("DiMA"), exposing such WMP files to Content Piracy and streamripping in particular.

72. In the summer of 2006, MRT delivered to the RIAA and IFPI the object code for the BBSP for WMP Software, as well as server setup instructions.

73. On or about November 8, 2006, at the request of the RIAA and the IFPI, MRT demonstrated to DiMA and several of its members, including Microsoft, the BBSP for WMP Software. The demonstration was a success and showed that the BBSP for WMP Software effectively prevented Content Piracy.

74. MRT is informed and believes, and on that basis alleges, that as a result of the demonstration of BBSP for WMP Software and the provision of object code for the BBSP for WMP Software to the RIAA and IFPI, Microsoft had access to object code for the BBSP for WMP Software.

75. The BBSP for WMP Software contains the Watermark.

Vista

76. MRT is informed and believes, and on that basis alleges, that in or about January 2007, Microsoft released the first commercial version of the Vista operating system, which did not allow the BBSP to interface with it but which did include a DRM system which, like X1RC, prevented Content Piracy and streamripping in particular.

77. MRT is informed and believes, and on that basis alleges, that when the Vista

operating system was released by Microsoft in January of 2007, the RIAA and IFPI no longer wanted the X1RC software, apparently believing that the DRM in Vista adequately protected against Content Piracy and streamripping in particular.

78. In or about May 2007, MRT and BlueBeat sent a cease and desist letter to Microsoft regarding the disabling of the ability of the BBSP to interface with Vista, such that the BBSP users could not play music from bluebeat.com on their Vista computers. Microsoft did not substantively respond to the cease and desist letter.

79. MRT is informed and believes, and on that basis alleges, that then unbeknownst to MRT, the Watermark first appeared in the DRM system in Microsoft's Vista operating system, Windows Media Player version 11 ("WMP 11") and the WMP 11 Software Developer Kit.

BBSP for Vista

80. Subsequent to the May 2007 cease and desist letter, MRT employees authored a revised version of the BBSP which was designed to and did interface with Vista (the "BBSP for Vista"). MRT is informed and believes, and on that basis alleges, that the BBSP for Vista is a derivative work of the BBSP within the meaning of the Copyright Act.

81. The BBSP for Vista contains the Watermark.

MRT Software

82. The X1RC software, the BBSP software, the BBSP for WMP Software and the BBSP for Vista software collectively will be referred to as the "MRT Software."

Microsoft Investigates Buying the CDP Patents

83. In 2012, MRT engaged Bank of America Merrill Lynch to seek a possible purchaser of MRT's portfolio of the Risan CDP Patents. The Vice-Chairman of Bank of America Merrill Lynch, Stephen M. Selig, headed up the engagement.

84. On or about May 14, 2012, MRT and Microsoft entered into a Confidentiality Agreement in connection with a possible acquisition of the Risan CDP Patents by Microsoft (the "Transaction"). Using a data room, Microsoft was given access to a substantial quantity of evaluation information that was confidential and proprietary to MRT to evaluate whether to enter the Transaction.

85. Microsoft chose not to pursue the Transaction.

MRT Investigates Whether Microsoft Infringes the Copyrights

86. Detection of copying of the MRT Software is extraordinarily difficult because Microsoft, like virtually every software vendor, protects the source code for its products as a trade secret and only distributes its products in executable code form.

87. As described above, the Watermark was designed to be and is detectable in object code compiled from source code containing it.

88. MRT is informed and believes, and on that basis alleges, that the only known way to detect copying of the MRT Software in Microsoft products distributed to the public is to search for the Watermark, and that without the Watermark, detection would be impossible.

89. MRT is informed and believes, and on that basis alleges, Microsoft was prohibited from intentionally using the Watermark code by at least Section D of the Final Judgment dated November 12, 2002 in *US v. Microsoft*.

90. In addition to containing the Watermark, the MRT Software contained encryption and anti-circumvention technological measures intended to prevent reverse-engineering.

91. The BBSP and the BBSP for Vista could be downloaded from bluebeat.com, which had terms of use prohibiting reverse engineering, decompiling or disassembling any software downloaded from it. Any downloaded copy of the BBSP and the BBSP for Vista contained an End User License Agreement, section 3 of which states that "[y]ou may not reverse engineer, decompile or disassemble the Software" and which End User License Agreement had to be accepted before the BBSP or the BBSP for Vista could operate. Thebluebeat.com terms of use and the End User License Agreement will be collectively referred to as the ("EULA").

92. Section 2(a)(iv) of the 2004 Microsoft-MRT NDA also prohibits Microsoft from "reverse engineering, disassembling or decompiling" the MRT Software.

93. MRT is informed and believes, and on that basis alleges, that because Microsoft was never given access to the source code for the MRT Software it would have had to reverse-engineer it in order effectively to copy it.

94. To determine whether there was use by others of the MRT Software, MRT

engaged a technical expert to investigate whether Microsoft might have copied the MRT Software into Microsoft products. To do this, the technical expert searched for the Watermark in the executable code in Microsoft products.

95. On or about April 12, 2014, the technical expert determined that a number of Microsoft products contained the Watermark, including Windows XP Service Pack 3, Windows Vista, Windows 8, Windows Media Player 11, Windows Media Player 12, Windows Media Player SDK, Internet Explorer 8, Internet Explorer 9, Internet Explorer 10 and Internet Explorer 11 (collectively the "Originally Identified Microsoft Infringing Products").

96. MRT's expert also determined that the Watermark was not present in any Microsoft product that had been released for at least eight (8) years prior to the release of the first of the Originally Identified Microsoft Infringing Products.

97. Subsequently, MRT learned that Windows 10 also contained the Watermark. Windows 10 together with the Originally Identified Microsoft Infringing Products will be referred to herein as the "Microsoft Infringing Products."

98. The technical expert retained by MRT found the Watermark in the portions of the Microsoft Infringing Products related to DRM and not otherwise in the Microsoft Infringing Products, and concluded it was likely the result of reverse-engineering of the MRT Software.

99. Despite the Watermark having been written in an antiquated 16-bit format, MRT's technical expert found the Watermark in 32-bit and 64-bit versions of Microsoft products but not in 16-bit versions of Microsoft products.

100. In light of: (a) the presence of the 16-bit Watermark in the Microsoft Infringing Products, all of which are 32-bit or 64-bit versions; (b) its absence from Microsoft's products prior to the introduction of Vista; (c) Microsoft's inability to develop its own DRM which effectively prevented Content Piracy; (d) the detection of the Watermark only in the portions of the Microsoft Infringing Products related to DRM and not otherwise in the Microsoft Infringing Products; (e) the requests from the RIAA and the MPAA that Microsoft implement MRT's X1RC software in its operating systems; (f) Microsoft's access to the MRT Software on several occasions; and (g) Microsoft's unsuccessful attempt to purchase MRT, among other things, MRT

is informed and believes, and on that basis alleges, that a substantial portion of the MRT Software and/or a derivative thereof is in the Microsoft Infringing Products.

101. Based on its discovery of the Watermark in the Microsoft Infringing Products, MRT is informed and believes, and on that basis alleges, that Microsoft's Protected Media Path ("PMP") software, a replacement for Microsoft's failed Palladium DRM software that Microsoft began developing in or around September 2005 when it began testing its then-new Vista operating system, contains a copy and/or derivative work of the MRT Software.

102. MRT is informed and believes, and on that basis alleges, that Microsoft's PMP software is included in some or all the Microsoft Infringing Products.

103. MRT is informed and believes, and on that basis alleges, that as of the date of this Complaint, Microsoft has distributed at least five billion (5,000,000,000) copies of Microsoft Infringing Products.

104. Based on its discovery of the Watermark in the Microsoft Infringing Products on April 12, 2014, MRT is informed and believes, and on that basis alleges, that the PMP Software Development Kit (the "PMP SDK") which Microsoft published in or around January 2006 for use by developers of software applications for online transactions requiring a high degree of cybersecurity such as e-commerce, entertainment, finance, defense, education and healthcare companies contains a copy and/or derivative work of the MRT Software.

105. MRT is informed and believes, and thereon alleges, that the Doe Defendants obtained the MRT Software from the PMP SDK or otherwise directly or indirectly from Microsoft and included the MRT Software and/or derivative works thereof in their e-commerce, entertainment, finance, defense, education and healthcare applications distributed to the public. ("the Doe Infringing Products").

106. MRT is at present unaware of the identity of the Doe Infringing Products or the number of copies of the Doe Infringing Products.

107. MRT applied for registration of the copyrights in the X1 Recording Control software (referred to herein as X1RC), United States Copyright Office Case Number 1-4815819791.

108. MRT applied for registration of the copyrights in the BlueBeat SeCure Player software (referred to herein as the BBSP), which includes the X1RC software incorporated therein, United States Copyright Office Case Number 1-481628258.

109. MRT applied for registration of the copyrights in the BlueBeat SeCure Player for Windows Media Player (referred to herein as the BBSP for WMP Software), United States Copyright Office Case Number 1-4816268382.

110. MRT applied for registration of the copyrights in the BlueBeat SeCure Player for Vista (referred to herein as the BBSP for Vista), which includes the X1RC software incorporated therein, United States Copyright Office Case Number 1-4816268452.

111. The source code for the MRT Software derived independent economic value from not being generally known to the public or to other persons who could obtain economic value from its disclosure or use and was the subject of efforts that were reasonable under the circumstances to maintain its secrecy at least through March 2017.

COUNT I: COPYRIGHT INFRINGEMENT AGAINST MICROSOFT AND DOES 1-1000, INCLUSIVE

112. MRT realleges paragraphs 1 through 111 as though set forth in full herein.

113. The MRT Software, collectively and individually, constitutes original works of authorship and constitutes copyrightable subject matter under the copyright laws of the United States pursuant to 17 U.S.C. § 101 et seq.

114. MRT is the owner of all right, title and interest, including all copyright rights, to the MRT Software and the rights to sue for damages for past infringement, future infringement, and for an injunction, and has complied in all respects with the laws governing copyrights and the enforcement thereof.

115. As the owner of the copyright in the MRT Software, MRT enjoys the exclusive right to, among other things, reproduce, prepare derivative works and distribute copies of the MRT Software pursuant to 17 U.S.C. §§ 101, 106.

116. MRT is informed and believes, and on that basis alleges, that Microsoft had access to executable code copies of the MRT Software.

117. MRT is informed and believes, and on that basis alleges, that Microsoft reversed engineered the executable code copies of the MRT Software to obtain the MRT Software source code.

118. MRT is informed and believes, and on that basis alleges, that Microsoft recompiled the MRT source code to create a copy and/or derivative work of the MRT Software.

119. MRT is informed and believes, and on that basis alleges, that Microsoft has without authorization reproduced and distributed copies and/or derivative works of the MRT Software at least in the Microsoft Infringing Products.

120. MRT is informed and believes, and on that basis alleges, that by its actions above, Microsoft has directly infringed, and will continue to infringe, MRT's copyrights in the MRT Software by creating, reproducing and distributing the MRT Software, or derivative works thereof.

121. MRT is informed and believes, and on that basis alleges, that as of the date of this Complaint, Microsoft has distributed at least five billion (5,000,000,000) copies of Microsoft Infringing Products.

122. MRT is informed and believes, and on that basis alleges, that various third party software products—including the e-commerce, entertainment, finance, defense, education and healthcare products of the Doe Defendants—also infringe MRT's copyrights in the MRT Software because those products contain copies of the MRT Software and/or derivative works thereof obtained from the PMP SDK or otherwise directly or indirectly from Microsoft. MRT will seek leave of Court to add the names of the Doe Defendants and the identities of the Doe Infringing Products to this Complaint when their identities are ascertained through discovery.

123. MRT is informed and believes, and on that basis alleges, that Microsoft's infringement of MRT's copyrights in the MRT Software was deliberate, willful and in disregard of MRT's rights, and it was committed for commercial gain.

124. MRT is informed and believes, and on that basis alleges, that Microsoft's and the Doe Defendants' infringement of MRT's copyrights has harmed and will continue to irreparably harm MRT unless restrained by this Court. MRT's remedy at law is not adequate, by itself, to

compensate for the harm inflicted and threatened by Microsoft and the Doe Defendants. Thus, in addition to all other remedies to which it is entitled, MRT is entitled to injunctive relief restraining Microsoft and the Doe Defendants, and their officers, agents, employees, and all persons acting in concert with them from engaging in further acts of copyright infringement as described herein including, without limitation, further distribution of any of the Microsoft Infringing Products or the Doe Infringing Products.

125. MRT's claim accrued, within the meaning of 17 U.S.C. § 507(b), no earlier than April 12, 2014.

126. MRT is entitled to the actual damages it suffered because of Microsoft's infringement of MRT's copyrights, plus the profits of Microsoft and the Doe Defendants attributable to infringement of MRT's copyrights from the sale or license of the Microsoft Infringing Products and Doe Infringing Products, in actual amounts to be proven at trial pursuant to 17 U.S.C. § 504(b).

127. MRT is also entitled to recover its attorneys' fees and costs of suit pursuant to 17 U.S.C. § 505.

COUNT II: CIRCUMVENTION IN VIOLATION OF DMCA AGAINST MICROSOFT

128. MRT realleges paragraphs 1 through 111 as though set forth in full herein.

129. The MRT Software, collectively and individually, constitutes original works of authorship and constitutes copyrightable subject matter under the copyright laws of the United States pursuant to 17 U.S.C. § 101 et seq.

130. MRT is the owner of all right, title and interest, including all copyright rights, to the MRT Software and the rights to sue for damages for past infringement, future infringement, and for an injunction, and has complied in all respects with the laws governing copyrights and the enforcement thereof.

131. As the owner of the copyright in the MRT Software, MRT enjoys the exclusive right to, among other things, reproduce, prepare derivative works and distribute copies of the MRT Software pursuant to 17 U.S.C. §§ 101, 106.

132. MRT is informed and believes, and on that basis alleges, that Microsoft had access to executable code copies of the MRT Software.

133. MRT is informed and believes, and on that basis alleges, that Microsoft reversed engineered the executable code copies of the MRT Software to obtain the MRT Software source code.

134. MRT is informed and believes, and on that basis alleges, that Microsoft recompiled the MRT source code to create a copy and/or derivative work of the MRT Software and without authorization reproduced and distributed copies and/or derivative works of the MRT Software at least in the Microsoft Infringing Products.

135. MRT is informed and believes, and on that basis alleges, that by its actions above, Microsoft has directly infringed, and will continue to infringe, MRT's copyrights in the MRT Software by creating, reproducing and distributing the MRT Software, or derivative works thereof.

136. MRT is informed and believes, and on that basis alleges, that the MRT Software included "effective technological measures" as that term is defined in the Digital Millennium Copyright Act, 17 U.S.C. §1201(a)(3)(B).

137. MRT is informed and believes, and on that basis alleges, that Microsoft violated 17 U.S.C. §1201(a)(1)(A) because it circumvented MRT's effective technological measures within the meaning of 17 U.S.C. §1201(a)(3)(A), the effective technological measures to create the Microsoft Infringing Products.

138. MRT's claim accrued, within the meaning of 17 U.S.C. § 507(b), no earlier than April 12, 2014.

139. MRT is entitled to the actual damages suffered because of Microsoft's acts of circumvention, plus the profits of Microsoft attributable to its acts of circumvention, in actual amounts to be proven at trial pursuant to 17 U.S.C. § 1203(c)(2).

140. MRT is also entitled to recover its attorneys' fees and costs of suit pursuant to 17 U.S.C. § 1203(b)(5).

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COUNT III: BREACH OF CONTRACT AGAINST MICROSOFT

141. MRT realleges paragraphs 1 through 111 as though set forth in full herein.

142. Section 2(a)(iv) of the 2004 Microsoft-MRT NDA prohibits Microsoft from "reverse engineering, disassembling or decompiling" the BBSP software code.

143. Section 3 of the EULA prohibits reverse engineering of the BBSP and the BBSP for Vista software code.

144. BlueBeat assigned its rights to sue Microsoft for breach of the EULA to MRT, including the right to recover all damages resulting therefrom before and after the date of the assignment.

145. The 2004 Microsoft-MRT NDA and the EULA are valid and enforceable contracts (the "Anti-Reverse Engineering Contracts").

146. MRT is informed and believes, and on that basis alleges, that Microsoft reverse engineered, disassembled or decompiled the BBSP and/or the BBSP for Vista software code in violation of one or both Anti-Reverse Engineering Contracts.

147. MRT performed all the obligations on its part to be performed under the Anti-Reverse Engineering Contracts.

148. MRT's claim for breach of contract accrued within the past four years because Microsoft's breaches of the Anti-Reverse Engineering Contracts were committed in secret and the harm flowing from Microsoft's breaches could not reasonably be discoverable by MRT until within the past four years.

149. MRT is entitled to all foreseeable damages proximately caused to MRT by Microsoft's breach of the Anti-Reverse Engineering Contracts.

150. MRT is entitled to its reasonable attorneys' fees in enforcing the 2004 Microsoft-MRT NDA pursuant to Section 4(f) thereof.

PRAYER FOR RELIEF

WHEREFORE, MRT requests that this Court award judgment as follows:

a. For injunctive relief enjoining Microsoft and the Doe Defendants, inclusive, their officers, agents, servants, employees, successors, assigns and all persons acting in concert with it or them, from directly or indirectly engaging in acts that infringe MRT's copyrights including without limitation distributing any of the Microsoft Infringing Products and the Doe Infringing Products, and any other products that includes a copy or derivative work of all or any part of the MRT Software, pursuant to 17 U.S.C. § 502;

b. For an award of Microsoft's and the Doe Defendants' profits attributable to the infringement under 17 U.S.C. § 504(b) together with pre-judgment and post-judgment interest on the damages awarded; or if elected prior to final judgment, statutory damages pursuant to 17 U.S.C. § 504(c);

c. For an award of attorneys' fees and costs pursuant to 17 U.S.C. § 505;

d. For all foreseeable damage proximately caused by Microsoft's breach of the Anti-Reverse Engineering Contracts;

e. For an award of its reasonable attorney's fees pursuant to Section 4(f) of the 2004 Microsoft-MRT NDA;

f. For an award of the profits of Microsoft attributable to its acts of circumvention in actual amounts to be proven at trial pursuant to 17 U.S.C. § 1203(c)(2) together with pre-judgment and post-judgment interest on the damages awarded);

g. For an award of attorneys' fees and costs pursuant to 17 U.S.C. § 1203;

h. For costs of suit; and

i. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

MRT demands a jury trial on all issues so triable.

Dated: April 6, 2017

Respectfully Submitted,

By */s/ Ian N. Feinberg*

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